

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUN MICROSYSTEMS, INC.,

No. C-07-05488 EDL

Plaintiff,

**ORDER FOLLOWING CLAIM
CONSTRUCTION HEARING**

v.

NETWORK APPLIANCE, INC.,

Defendant.

On November 10, 2008, the Court held a hearing to construe the disputed terms of United States Patent Numbers 5,124,987 (the “’987 patent”), 5,430,855 (“’855 patent”), 5,632,012 (“’012 patent”), and 6,421,787 (“’787 patent”) (collectively, “Sun patents”) pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996). The Court ordered the parties to meet and confer and then file a joint table with the parties’ final proposed construction of the disputed terms by no later than November 17, 2008. The parties also shall file simultaneous supplemental briefs, of no more than five pages in length, on the following issues: legal authority addressing means-plus-function claims in the context of software as part of the corresponding structure; consistent construction of independent and dependent claims in the context of claims 1 and 9 of the ’012 patent; the issue of method claims vs. system claims raised regarding the ’987 patent.

At the hearing, the Court granted leave for NetApp to lodge the complete file histories of the Sun patents, subject to allowing Sun an opportunity to respond. However, the Court instructed counsel for NetApp to consider its reliance on additional portions of file histories in light of Phillips v. AWH Corp., 415 F.3d 1303, 1317 (Fed. Cir. 2005). By 12:00 noon, November 12, 2008, counsel for NetApp shall inform the Court and opposing counsel whether it will pursue the prosecution

1 history arguments put forth at the hearing, and if so, provide specific citations and a brief summary
2 of its argument. Sun may respond to NetApp's contentions by November 17, 2008.

3 **IT IS SO ORDERED.**

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5 Dated: November 10, 2008

Elizabeth D. Laporte

6 ELIZABETH D. LAPORTE
7 United States Magistrate Judge
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